

**General Information Letter:** Duty of nonresident to pay estimated taxes when only Illinois-sourced income is derived from farming.

March 19, 1998

Dear:

This is in response to your letter we received on August 29, 1997, in which you request a letter ruling. Your letter was misplaced and just recently found, and I sincerely apologize for the delay in responding.

Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you have stated the following:

We just received a bill for penalty for underpayment of estimated tax. We are non-residents of Illinois and only pay Illinois tax on Farm income. We do not know our farm income until the end of the year when we receive our statement from the farm manager. Since farmers do not have to make estimated payments, it seems unfair that we are required to make the payments.

### **Ruling**

Section 803(a) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 *et seq.*) provides:

Every taxpayer other than an estate, trust, partnership, Subchapter S corporation or farmer is required to pay estimated tax for the taxable year, in such amount and with such forms as the Department shall prescribe, if the amount payable as estimated tax can reasonably be expected to be more than \$250 or \$400 for corporations.

Section 803(e) of the IITA defines "farmer" to mean:

An individual, having gross income from farming for the taxable year which is at least 2/3 of his total estimated gross income for such year.

Section 203(e)(1) of the IITA provides that:

for purposes of this Section and Section 803(e), a taxpayer's gross income, adjusted gross income, or taxable income for the taxable year shall mean the amount of gross income, adjusted gross income or taxable income properly reportable for federal income tax purposes for the taxable year under the provisions of the Internal Revenue Code.

Accordingly, the determination of whether or not you are a farmer exempt from the requirement to pay estimated tax is expressly based on the percentage of your federal gross income received from farming, not on the income you derive from Illinois sources.

Please note that, pursuant to Section 3-8 of the Uniform Penalty and Interest Act (35 ILCS 735/3-8), no penalty is due for failure to pay estimated taxes if the failure to pay was due to reasonable cause. In order to have the penalty abated under this provision, you should file a petition with the Board of Appeals. A copy of the petition form is enclosed.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200. Please note, however, that a PLR cannot apply the law to a hypothetical situation and a PLR is not binding with respect to a statement of facts which is incomplete or incorrect.

Sincerely,

Paul S. Caselton  
Associate Chief Counsel -- Income Tax